

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JULIE L. VORWERCK,	:	Case No. 3:15-cv-345
	:	
Plaintiff,	:	Magistrate Judge Sharon L. Ovington
	:	(by full consent of the parties)
vs.	:	
	:	
COMMISSIONER OF THE SOCIAL	:	
SECURITY ADMINISTRATION,	:	
	:	
Defendant.	:	

DECISION AND ENTRY

This case is before the Court upon Plaintiff's Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b)(1) (Doc. #19) and Defendant's Response (Doc. #20).

The Motion seeks an award of attorney fees under 42 U.S.C. § 406(b)(1) in the total amount of \$22,580.75. The Commissioner does not object to this amount. In the absence of opposition by the Commissioner, the Motion and supporting Exhibits establish that an award of attorney fees is reasonable and warranted under 42 U.S.C. § 406(b)(1) in the amount Plaintiff's counsel seeks.

In addition, the Court previously accepted the parties' stipulation to an award of \$6,000.00 in attorney fees to Plaintiff's counsel under the Equal Access to Justice Act (EAJA).¹ (Doc. #18). In Plaintiff's previous case, the Court likewise accepted the parties' stipulation to an EAJA award of \$4,350.00 in attorney fees to Plaintiff's counsel

¹ The parties also stipulated to \$400.00 in costs.

under the EAJA. *See Vorwerck v. Comm’r of Soc. Sec.*, case no. 3:11-cv-375, Notation Order approving Doc. #20 (S.D. Ohio July 8, 2013). Both EAJA awards, however, were subject to offset in the amount of any debt Plaintiff owed the Government. *See id.*; Doc. #18. The current record indicates that Plaintiff’s attorney received EAJA fees in the total amount of \$10,350.00. (Doc. #19-4). Counsel may not recover attorney fees under both the EAJA and 42 U.S.C. § 406(b) for the same work. Therefore, Plaintiff’s counsel must return to Plaintiff the previously awarded EAJA fees in the amount of \$10,350.00. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002).

IT IS THEREFORE ORDERED THAT:

1. The Motion for Attorney Fees filed by Plaintiff’s attorney (Doc. #19) is GRANTED;
2. The Commissioner shall pay Plaintiff’s attorney fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$22,580.75;
3. Plaintiff’s counsel shall refund to Plaintiff the amount of attorney fees, if any, he has actually received under the Equal Access to Justice Act; and
4. The case remains terminated on the docket of this Court.

IT IS SO ORDERED.

Date: 10/22/2018

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge